

January 28, 2005

OIL AND GAS DOCKET NO. 08-0240332

COMMISSION CALLED HEARING TO SUPERCEDE THE DEFAULT ORDER ISSUED NOVEMBER 21, 2002 IN DOCKET NO. 08-0231288 REQUIRING PLUGGING OF WELL NO. 1 ON THE HORD, RUTH W. (20925) LEASE, WORSHAM (DELAWARE SAND) FIELD, REEVES COUNTY, AND TO ENABLE SAVANA OIL & GAS, TO BECOME THE OPERATOR OF RECORD AND TO PRODUCE THE ABOVE-REFERENCED WELL.

APPEARANCES:
FOR APPLICANT:
Jeff Morales

APPLICANT:
Savana Oil & Gas

PROPOSAL FOR DECISION

PROCEDURAL HISTORY

DATE OF REQUEST FOR ACTION:	September 3, 2004
NOTICE OF HEARING:	September 30, 2004
DATE CASE HEARD:	October 14, 2004
RECORD CLOSED:	November 5, 2004
HEARD BY:	Mark Helmueller, Hearings Examiner Margaret Allen, Technical Examiner
PFD CIRCULATION DATE:	January 28, 2005

STATEMENT OF THE CASE

This hearing was set to consider the request of Savana Oil & Gas (hereinafter "Savana") to supercede the Default Order issued November 21, 2002 in Docket No. 08-0231288 requiring plugging of Well No. 1 on the Hord, Ruth W. (20925) Lease, Worsham (Delaware Sand) Field, Reeves County (hereinafter "subject lease"). Savana claims that can restore the well to production and that the well therefore should not be plugged.

SUMMARY OF EVIDENCE

The examiners took official notice of records related to Savana's most recent Commission Form P-5 (Organization Report) filing, records identifying the wells which Savana currently operates, production records for the Hord, R. W. Unit (042924) from January 1993 to the present, the complete hearing file for Oil & Gas Docket No. 08-0231288, and Commission mapping and well location records for the subject well and the Hord, R. W. Unit (042924).

Savana filed its most recent P-5 on August 24, 2004. Savana has posted financial assurance

with the Commission in the form of a \$25,000 bond. Savana currently operates 2 wells.

The prior operator of the subject lease, John Passmore (hereinafter "Passmore"), submitted a Commission Form P-4 for the subject lease effective June 1, 1992. Passmore never reported any production from the well. In Oil & Gas Docket No. 08-0231288, Passmore was ordered to plug Well No. 1 for violation of Statewide Rule 14(b)(2). Passmore does not possess any interest in the well and is not affiliated with Savana.

Savana obtained an assignment of the original May 4, 1956 lease from Passmore on August 28, 2004. Savana believes the original lease remains in force and effect due to continuous production from the Hord, R. W. Unit (042924). Commission production records for the Hord, R. W. Unit (042924) from January 1993 to the present confirm this continuous production.

Savana provided records and testimony showing that the well was abandoned in 1991 when a pump became stuck during a workover. Attempts to remove or mill through the pump were unsuccessful, which in turn prevented the well from being produced. Savana believes that it can remove the obstruction and produce up to 12,775 barrels of oil and 5.475 MMCF of natural gas from the current formation. Additionally, Savana believes that the log interpretations for the well show that other intervals encountered in the well above the obstruction have potential. Finally, a recently performed a mechanical integrity test shows no evidence of a casing leak.

AUTHORITY

Texas Natural Resources Code §85.049(a) provides:

On a verified complaint of any person interested in the subject matter that waste of oil or gas is taking place in this state or is reasonably imminent, or on its own initiative, the commission after proper notice, may hold a hearing to determine whether or not waste is taking place or is reasonably imminent and if any rule or order should be adopted or if any other action should be taken to correct, prevent or lessen the waste.

Texas Natural Resources Code §89.041 establishes the affirmative statutory responsibility of the Commission concerning abandoned wells:

If it comes to the attention of the commission that a well has been abandoned or is not being operated is causing or is likely to cause pollution of fresh water above or below the ground or if gas or oil is escaping from the well, the commission may determine at a hearing, after due notice, whether or not the well was properly plugged as provided in Section 89.011 or Section 89.012 of this code.

Texas Natural Resources Code §89.042(a) provides:

If the commission finds that the well was not properly plugged, it shall order the operator to plug the well according to the rules of the commission in effect at the time the order is issued.

Texas Natural Resources Code §91.107 requires that an operator file financial assurance in the form of a bond, letter of credit or cash deposit in the amount necessary for both existing wells operated and any wells being transferred, prior to Commission approval of the transfer.

Under Statewide Rule 14, the Commission may require a person seeking to be recognized as the operator of a well to provide evidence of a good faith claim of a continuing right to operate.

EXAMINERS' OPINION

Savana claims that it can meet the requirements to be recognized as the operator of the subject lease and restore the well to active production. However, this claim is complicated by the Final Order requiring that Passmore plug the well. It is the examiners' conclusion that an order superceding a Commission Final Order is warranted if the operator shows: 1) that it has a good faith claim of a continuing right to operate the well or lease; 2) that it has met the financial assurance requirements of Texas Natural Resources Code §91.107; and 3) that a superceding order is necessary to prevent waste. Savana has satisfied all of these requirements.

The first two factors apply to all transfers of inactive wells, not just cases where a well is ordered to be plugged. Any operator seeking to acquire an existing well which has been inactive for more than 12 months must show that it has a good faith claim of a continuing right to operate the well upon demand by the Commission. This requirement is found in Statewide Rule 14(b)(2). Additionally, the operator must meet the requirements of Texas Natural Resources Code §91.107 as the Commission may not approve the transfer of an existing well unless the new operator has filed financial assurance with the Commission in the form of a bond, letter of credit or cash deposit.

In this case, a good faith claim of a right to operate is established by the assignment and records showing that the original 1956 lease remains in effect due to continuous production from the Hord, R. W. Unit (042924). Savana also has a \$25,000 bond in place which satisfies the financial assurance requirement under Texas Natural Resource Code §91.107. Additionally, the prior operator, Passmore, does not retain any interest in the well.

Superceding a Final Order to Prevent Waste

Default Orders in Commission Enforcement Proceedings generally require an operator to plug a well for a violation of Statewide Rule 14(b)(2) if there is no reported production from the well (or injection for injection and disposal wells) in the past 48 months. These "plug only" orders reflect the Commission policy to require plugging of wells which are in violation of Commission rules and have been inactive for an extended period.

To support these "plug only" orders, a Finding of Fact identifies when the well or lease last reported any production or injection activity. An additional finding of fact addresses the statutory

requirement in Texas Natural Resources Code §89.041, by finding that the unplugged well is causing or is likely to cause pollution of fresh water above or below the ground.

A “plug only” order falls under the Commission’s authority in Texas Natural Resources Code §89.042. Further, the courts recognize that a Commission order to plug a well “is entitled to the same weight and finality as an order granting or refusing a permit to drill a well.” *Wrather Petroleum Corporation v. Railroad Commission*, 230 S.W.2d 388, 390 (Tex.App. - Austin 1950, *reh’g denied*) citing *Railroad Commission of Texas v. Gulf Production Co.*, 132 S.W.2d 254, 256, (Tex. 1939). Finally, the findings of fact are not “technical prerequisites” but satisfy a “substantial statutory purpose.” *Morgan Drive Away, Inc. v. Railroad Commission*, 498 S.W.2d 147, 150 (Tex.1973); *Railroad Commission of Texas v. R. J. Palmer*, 586 S.W.2d 934 (Tex.App. - Austin 1979, *no writ*).

Under Texas Natural Resources Code §85.409(a), the Commission may supercede a rule or order if evidence presented at a hearing shows that waste is taking place or is reasonably imminent. In this case, the Default Order entered against Passmore was a “plug only” order. Therefore, Savana must show that a new order superceding the “plug only” provision of the Default Order is necessary to prevent waste.

Application of Waste Standard

The uncontradicted evidence presented at the hearing is sufficient to show that an order superceding the “plug-only” provision in the prior order may be necessary to prevent waste. The well log submitted by Savana supports its interpretation that it can produce up to 12,775 barrels of oil and 5.475 MMCF of natural gas from the existing completion in the Delaware Sand formation. Additionally, the well log supports Savana’s interpretation that other intervals encountered in the well above the obstruction could potentially produce oil and/or natural gas. This is a significant volume of reserves in the current completion which would likely be wasted if the well were plugged. Additionally, it is likely that waste would occur if other potentially productive zones were not pursued because this well was plugged.

However, the evidence is not clear as to Savana’s assertions that it will be able to successfully restore production in the existing completions. The well records and testimony show that this well was abandoned in 1991 due to a downhole obstruction. Savana believes that it can either remove the obstruction or reestablish production even if it is unable to remove the obstruction. The examiners’ are unable to conclude under the evidence presented that Savana will be able to successfully clear the obstruction. The well records show that in 1991 a rig was on the well for approximately one week attempting to remove the obstruction, but that the attempts were not successful. Savana did not provide any operation plan or other information to suggest that it would be able to remove the obstruction where other attempts failed. Further, Savana did not provide any information to support its belief that it would be able to produce the well from the existing Delaware Sand completion without first removing the obstruction.

The examiners recognize that requiring Savana to affirmatively prove its assertions that it can either remove the obstruction or produce the well through the obstruction may establish an

evidentiary conundrum, i.e., Savana does not have current information to prove its assertions in large part because it is unable to access the well to determine its current condition until the Commission recognizes it as the operator. Accordingly, the examiners are unable to recommend that a finding of fact be entered showing that Savana will be successful in restoring production due to the risk that its attempts to restore production in the existing zone may not be successful. However, the examiners believe that the risk that Savana will not restore production in the current completion is not a basis for denying its application where it has established: 1) a legal right to operate the well; 2) compliance with Commission financial assurance requirements; and 3) that a significant amount of reserves may be wasted if the well is plugged. Additionally, Savana has established through the performance of a mechanical integrity test that even though a downhole obstruction is present, the well does not pose a current pollution threat. Finally, there is no indication that Savana is acting as a proxy for the prior operator in an attempt to avoid the requirements of the prior order.

Under these circumstances, the examiners recommend that an order superceding the plug only provision in the Default Order should be entered. Additionally, Savana should be recognized as the operator of the subject well.

FINDINGS OF FACT

1. Savana Oil & Gas (hereinafter "Savana"), was given at least 10 days notice of this proceeding. Savana appeared at the hearing and presented evidence.
2. Savana filed its most recent Commission Form P-5 (Organization Report) on August 24, 2004. Savana has posted financial assurance with the Commission in the form of a \$25,000 bond. Savana currently operates 2 wells.
3. John Passmore (hereinafter "Passmore"), submitted a Commission Form P-4 for the Hord, Ruth W. (20925) Lease, Well No. 1 (hereinafter "subject lease" and/or "subject well") effective June 1, 1992. Passmore never reported any production from the subject well.
4. In Oil & Gas Docket No. 08-0231288, Passmore was ordered to plug the subject well for a violation of Statewide Rule 14(b)(2) and to pay an administrative penalty of \$2,000.00.
5. Savana obtained an assignment of a May 4, 1956 lease from Passmore on August 28, 2004. The May 4, 1956 lease references 320 acres. Commission mapping and well records show that both the subject well and a well on the Hord, R. W. Unit (042924) are located within the acreage identified in the May 4, 1956 lease. The prior operator, Passmore does not possess any interest in the well and is not affiliated with Savana.
6. Commission production records for the Hord, R. W. Unit (042924) from January 1993 to the present confirm continuous production.
7. The subject well was abandoned in 1991 when a pump became stuck during a workover. Attempts to remove or mill through the pump were unsuccessful, which in turn prevented

the well from being produced.

8. A well log for the subject well can be interpreted to show that up to 12,775 barrels of oil and 5.475 MMCF of natural gas could be produced from the existing completion in the Delaware Sand. Additionally, log interpretations also show that other intervals encountered in the well above the obstruction have the potential to produce oil and/or natural gas.
9. A recent mechanical integrity test shows that the well does not currently pose a threat of pollution to usable quality water.
10. Superceding the requirement in the Default Order entered in Oil & Gas Docket No. 08-0231288 that the subject well be plugged is necessary to prevent waste.

CONCLUSIONS OF LAW

1. Proper notice of hearing was timely issued to the appropriate persons entitled to notice.
2. All things necessary to the Commission attaining jurisdiction have occurred.
3. Savana has a good faith claim of a continuing right to operate the subject lease.
4. Savana has filed financial assurance in the type and amount required under Texas Natural Resources Code §91.107 to be approved as the operator of the subject lease.
5. A Final Order superceding the “plug only” provision in the Default Order entered in Oil & Gas Docket No. 08-0231288 that the subject well be plugged is necessary to prevent waste.

RECOMMENDATION

The examiners recommend that the Commission grant the request to supercede the provisions in the Default Order entered in Oil & Gas Docket No. 08-0231288 requiring plugging of Well No. 1 on the Hord, Ruth W. (20925) Lease. The examiners further recommend that all other provisions of the Master Default Order remain in full force and effect.

Respectfully submitted,

Mark J. Helmueller
Hearings Examiner

Margaret Allen
Technical Examiner